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Letter dated 29 August 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 9 April 2003 (S/2003/429).

The Counter-Terrorism Committee has received the attached third report from Bolivia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution1373 (2001) concerning counter-terrorism

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Annex

Letter dated 20 August 2003 from the Chargé d'affaires a.i. of the Permanent Mission of Bolivia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: Spanish]

I have the honour to enclose the replies supplementing the original report and the supplementary report, submitted by the Government of Bolivia to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Edwin **Ortiz Gandarillas**
Deputy Permanent Representative
Chargé d'affaires a.i.

Enclosure

Replies supplementing the original report and the supplementary report, submitted by the Government of Bolivia to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)

1. Implementation measures

1.2 Please provide details of any legal provisions adopted to meet the requirements of subparagraph 1 (b) of resolution 1373 (2001) or an indication of the action which Bolivia plans to take in that regard.

The Criminal Code, partially amended in 1997, penalizes offences such as terrorism (art. 133) and provides for a penal and administrative regime on the legitimizing of illicit profits from offences related to drug trafficking, corruption of public officials and offences committed by criminal organizations.

The scope of article 133 is designed to protect against common crime and preserve domestic security.

The Criminal Code also establishes a system for the seizure of goods and funds derived from the illegal legitimizing of illicit profits and sets up an administrative system through the creation of the Financial Intelligence Unit (FIU).

As to article 185 bis of the Criminal Code, it does indeed apply to funds only by reference to their origin. Consequently, in order to adapt the definition of offences to requirements such as those in article 2, paragraph 3 of the International Convention for the Suppression of the Financing of Terrorism, the FIU is preparing draft legislation against money-laundering, which provides for and strengthens the definition of offences relating to the legitimizing of illicit profits from drug trafficking, corruption of public officials and criminal organizations (money-laundering), and also covers acts related to the financing of terrorism.

1.3 Please describe the legal provisions authorizing the freezing of funds, regardless of their origin, in the situations referred to under this item.

The draft legislation against money-laundering includes the legal provisions authorizing the freezing of funds.

1.4 Please provide a progress report on the steps taken and to be taken by Bolivia to incorporate the requirements of subparagraph 1 (d) into its domestic law.

Under the new Executive Power Organization Act No. 2446 of 19 March 2003 and its Regulatory Decree No. 26973, the Ministry of the Presidency, through its Vice-Ministry of Justice, is responsible for updating Bolivian legislation.

The Vice-Ministry of Justice, in order to implement additional reforms of the Criminal Code, which was modified in 1997, has organized workshops and seminars, the conclusions of which have reflected the dispersion of definitions of offences among special laws. Priority will therefore be given to unifying substantive rules of criminal law.

The overall thrust of the draft legislation on money-laundering referred to in the preceding paragraphs is to update and adapt existing legislation, collect

international recommendations and incorporate into domestic law the provisions of counter-terrorism treaties to which Bolivia is a party.

1.5 Does the obligation to report possible cases of legitimization of illicit profits extend beyond designated persons within the traditional financial sector?

It should be recalled that the scope of the legal framework within which the FIU functions is as follows:

- Activities of financial intermediaries and auxiliary financial services;
- Activities of intermediaries in or related to the securities market;
- Activities of insurance entities, intermediaries and auxiliaries.

Bolivian legislation creates the obligation to report on suspicious transactions which do not match the usual customer profile, whether they are for legal purposes or not.

Although lawyers, notaries, self-employed accountants, bureaux de change, alternative money transmission agencies and non-governmental organizations are currently not obliged by law to submit compulsory reports to the FIU, this defect has been taken into account in the draft legislation on money-laundering which is being prepared by the FIU.

1.6 In relation to bodies which have been granted tax exemptions, do the current laws impose an audit requirement on the organizations concerned?

The tax system established by Act No. 843 of 20 May 1986 has been amended a number of times. This is why the Government decided to publish the "revised text 2000", which provides for the following:

1. Exemptions not requiring any formalities in order to be recognized.

2. Exemptions granted to legal persons operating on a non-profit basis (welfare, charity and religious associations; non-governmental organizations both domestic and international; and foundations), legally authorized and subject to certain requirements, whose statutes expressly provide that the totality of their revenue and assets are to be used for the purposes for which they were created, and that should the entity close down, those assets will be distributed among other bodies having the same purposes or will be donated to State institutions.

The laws currently in force do not impose an audit requirement on the organizations concerned. However, the Ministry of Foreign Affairs and Worship, the Ministry of Finance and the FIU have duly taken note of this defect.

1.7 Please state the action taken or proposed in relation to the regulation of alternative money transmission agencies, not only in relation to money-laundering but also in relation to other criminal activity, especially terrorism.

The FIU, as a member of the South American Financial Action Task Force on Money Laundering (GAFISUD), has accepted the eight Financial Action Task Force (FATF) special recommendations on terrorist financing.

Although currently there is no legal framework for monitoring alternative money transmission agencies and bureaux de change, their activities will be covered under the aforesaid draft legislation on money-laundering.

1.8 Please refer to reports or questionnaires submitted to other organizations involved in monitoring international standards, and provide details of any measures to implement international best practices, codes and standards which are relevant for the implementation of the resolution.

The report submitted by Bolivia in October 2002, through the FIU was assessed by GAFISUD, the International Monetary Fund (IMF) and the World Bank, in relation to the Money Laundering Prevention Integrated System (SIPLA). Annexed to the present report is a copy of the final assessment report, submitted by the assessors on 24 March 2003.

1.9 Action taken or proposed by Bolivia in relation to subparagraph 2 (a).

Article 133 does not penalize the recruitment of members of terrorist groups operating inside or outside Bolivian territory. Consequently, pursuant to subparagraph 2 (a), we have taken into account the need to add this provision to our substantive rules of criminal law.

1.10 Please submit a further report on the enactment and implementation of the draft law on weapons, munitions, explosives and dual-use chemical agents mentioned in the previous reports. Is it intended to include provisions limiting the acquisition of firearms to suitable persons having a demonstrated and legitimate need for them?

Under Supreme Decree No. 5789 of 8 May 1961, the Ministry of Defence has the power to prevent, authorize or restrict imports of weapons, munitions, explosives, chemical agents, components for explosives, fireworks and pyrotechnics, and all types of military equipment.

The Armed Forces Organization Act of 31 December 1992, chapter III, article 22 (p), states that the authority and responsibility of the Armed Forces includes expressly authorizing and controlling the importation into any part of the country of weapons, chemical and bacteriological agents, hunting and fishing equipment, and various types of explosives.

The draft legislation on weapons which was submitted by the Ministry of Defence is still under consideration by the Defence Committee of the Chamber of Deputies. It comprises nine titles and 92 articles, which deal with the following general areas:

- Illicit manufacture of conventional and unconventional weapons, munitions, explosives, dual-use chemical agents and related materials;
- Clandestine import, export and trading of conventional and unconventional weapons, munitions, explosives and dual-use chemical agents;
- Misuse of military or police weapons.

Title V, chapter II (National Arms Register) regulates the registration of all civilian weapons in Bolivian territory, authorizing their acquisition, possession, use, circulation and transfer and domestic sale, except for antique weapons.

Articles 52 and 54 refer to the requirements for acquiring, carrying and using weapons. They also regulate the means by which they are acquired by civilians and the purpose of their acquisition.

Under Chapter X (Weapons), article 128 (2) (control and supervision, in relation to civilians), weapons may not be sold or possessed casually; it must be done with the appropriate authorization in every case, and the person concerned must hold a licence to carry the weapon and must comply with all the requirements.

1.11 Please comment on what action Bolivia intends to take to meet fully the requirements of subparagraphs 2 (d) and (e) of the resolution.

Article 1, paragraph 7, of the Criminal Code makes only a general reference to the offences that Bolivia is required by treaty or convention to punish. It has therefore been decided that the definitions of the offences referred to in subparagraphs 2 (d) and (e) of the resolution will be clarified as part of the new reforms which are being prepared.

1.12 Please explain the basis for the qualification mentioned in the supplementary report and how Bolivia meets the requirement of subparagraph 2 (e).

A person residing habitually in Bolivia who has committed an offence must be tried in Bolivian territory in accordance with Bolivia's legal system.

The second part of the question was replied to in the previous paragraph.

1.13 Please report on any actions taken by Bolivia to fulfil the commitments made under the international treaties to which it is a party by harmonizing and incorporating into its domestic legislation, in a second phase, the provisions contained in the anti-terrorism treaties.

This implementation stage is in a preliminary phase in which the technical assistance requested will be particularly valuable.

1.14 What is the nature of the extradition treaty concluded by Bolivia with MERCOSUR, which is listed in the supplementary report along with bilateral treaties rather than with multilateral instruments?

The legal nature of the extradition treaty between the member States of MERCOSUR (the Southern Common Market), the Republic of Bolivia, and the Republic of Chile is indeed multilateral.

1.15 Progress report on the ratification by Bolivia of the nine international instruments relating to terrorism that were promulgated by acts passed in 2001 and for which instruments of ratification were in the process of preparation at the time of submission of the supplementary report.

International counter-terrorism conventions to which the Republic of Bolivia is a party

A. Organization of American States (OAS) conventions

1. Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance, of 2 February 1971

Signed on 19 December 2001

Promulgated as Act No. 2284 on 5 December 2001

Instrument of ratification deposited on 9 April 2002

2. Inter-American Convention against Terrorism, adopted on 3 June 2002 at the thirty-second session of the OAS General Assembly in Bridgetown, Barbados

Signed by Bolivia on 3 June 2002

B. United Nations conventions

3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly on 14 December 1973

Promulgated as Act No. 2289 on 5 December 2001

Instrument of ratification deposited on 22 January 2002

4. International Convention against the Taking of Hostages, adopted by the General Assembly on 17 December 1979

Signed by Bolivia on 25 March 1980

Promulgated as Act No. 2280 on 27 November 2001

Instrument of ratification deposited on 7 January 2002

5. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980

Promulgated as Act No. 2288 on 5 December 2001

Instrument of ratification deposited on 24 June 2002

6. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988

Promulgated as Act No. 2290 on 5 December 2001

Instrument of ratification deposited on 24 June 2002

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988

Promulgated as Act No. 2286 on 5 December 2001

Instrument of ratification deposited on 13 February 2002

8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988

Promulgated as Act No. 2291 on 5 December 2001

Instrument of ratification deposited on 13 February 2002

9. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991

Signed on 1 March 1991

Promulgated as Act No. 2285 on 5 December 2001

Instrument of ratification deposited on 1 February 2002

10. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997

Promulgated as Act No. 2287 on 5 December 2001

Instrument of ratification deposited on 22 January 2002

11. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999

Signed by Bolivia on 2 November 2001

Promulgated as Act No. 2279 on 27 November 2001

Instrument of ratification deposited on 7 January 2002

II. International Civil Aviation Organization (ICAO) conventions in force in Bolivia prior to 11 September 2001

12. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963

Bolivia acceded by Supreme Decree No. 15641 of 21 July 1979.

13. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970

Bolivia acceded by Supreme Decree No. 15640 of 21 July 1978.

14. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971

Bolivia acceded by Supreme Decree No. 15642 of 21 July 1978.

1.15 What is the effect in the domestic law of Bolivia of the promulgation by act of those international instruments? Please outline the provisions of those acts that give effect to those instruments in domestic legislation and indicate what further steps need to be taken.

The High-Level Working Group recommended to the national Government which took office on 6 August 2002 that an inter-agency committee for the implementation of the international instruments promulgated by act in November and December 2001 should be created.

To that end, the Ministry of Foreign Affairs negotiated directly with the relevant officials of the Vice-Ministry of Justice and, on 18 September 2002, organized an inter-agency meeting to launch the implementation committee.

The representatives of the participating agencies agreed that it was urgent to request the then Minister of Justice and Human Rights to create a committee responsible for making the relevant proposals for reform of the Criminal Code as a first step towards implementation of the conventions on terrorism.

At the request of FIU, it was agreed that the International Convention for the Suppression of the Financing of Terrorism would be given priority consideration at a meeting to be held in October 2002.

It was also decided to invite the heads of the National Office of Migration, the National Customs Office and the National Police to participate by sending their representatives to future meetings of the Working Group.

1.16 Please confirm that the exception mentioned in article 151 of the Code of Criminal Procedure is not a bar to the extradition of a person for terrorist acts that have political motivation. Is a distinction made between political opinion and acts based on a particular political opinion?

The exception forbidding extradition where there is good reason to believe that it is being requested in order to prosecute or punish a person on grounds of his political opinions (art. 151 of Bolivia's Code of Criminal Procedure) is not a bar to the extradition of a person for terrorist acts that have political motivation.

A distinction must be made between mere political opinion and acts based on a particular political opinion which may be of a terrorist nature and may constitute a serious threat to State security or public order.

2. Assistance and guidance

2.1 Please inform the Committee of any areas (other than those set out below) in which assistance or advice might be of benefit in taking forward the implementation of the resolution in Bolivia, or of any areas in which Bolivia might be in a position to offer assistance or advice to other States on the implementation of the resolution.

At their most recent meeting on 25 June 2003, the agency members of the Working Group on Terrorism reiterated the requests made in the supplementary report of 24 July 2002.

2.2 Areas in which Bolivia has requested assistance

Bolivia reiterates the requests made in the supplementary report of 24 July 2002.

2.3 Bolivia may request technical assistance from IMF and the World Bank under their joint Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) programme.

Bearing in mind the Committee's suggestions to the Government of Bolivia in note S/AC.40/2002/MS/OC.207 of 24 February 2003, the FIU requested cooperation under the AML/CFT programme of IMF and the World Bank through the Chief of the Special Financial Supervisory Issues Division of IMF.

IMF replied favourably to the FIU request and offered to provide a comprehensive training programme in the following areas:

1. Methods and instruments used for money-laundering and the financing of terrorism in the banking system and capital market;

2. Major financial transactions and products most likely to be used for money-laundering and the financing of terrorism;

3. Measures relating to the supervision of financial institutions in order to comply with international measures for combating money-laundering and the financing of terrorism; and

4. Review of Bolivian law, including, where necessary, assistance in drafting legislation to combat money-laundering and the financing of terrorism; international cooperation; and the incorporation of issues relating to the financing of terrorism, and others.

2.4 At this stage the Committee will be focusing on requests for assistance that relate to "Stage A" matters.

3. Submission of further report

3.1 Have any of the experts been contacted through Ms. Welch?

No.

3.2 The reasons for which this report could not be submitted on 27 May 2003 were explained in communication VREC-DGAM/355/2003 dated 29 May 2003, which was sent to the Permanent Mission of Bolivia to the United Nations in New York for transmittal to the Committee.

3.3 The Committee would be grateful to be kept informed of all relevant developments regarding the implementation of the resolution by the Government of Bolivia.

The Working Group on Terrorism will continue to provide information on the progress of its work.

La Paz, 28 July 2003